

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

IN RE: DIISOCYANATES
ANTITRUST LITIGATION,

This Document Relates to:
ALL ACTIONS

Master Docket Misc. No. 18-1001

MDL No. 2862

[PROPOSED] CASE MANAGEMENT ORDER NO. 1¹

WHEREAS, twelve antitrust class actions (the “Actions”) were filed in or transferred to this Court arising out of allegations that the defendants unlawfully engaged in a conspiracy to raise, maintain or stabilize the prices of methylene diphenyl diisocyanate or MDI and toluene diisocyanate or TDI (collectively MDI and TDI are referred to as “Diisocyanates”) in violation of Section One of the Sherman Act, 15 U.S.C. §§ 1, 3;

WHEREAS, on October 3, 2018, the Judicial Panel on Multidistrict Litigation (“JPML”) issued an order centralizing three of the Actions to this Court, and numerous related Actions have been transferred since that time;

WHEREAS, on October 30, 2018, the Court entered an order pursuant to Fed. R. Civ. P. 42(a) consolidating for pretrial purposes all Actions filed in the Western District of Pennsylvania and all Actions which have been or will be transferred here by the JPML (the consolidated

¹ Counsel for the parties met and conferred several times to prepare this proposed Case Management Order No. 1. They reached agreement on many but not all of its terms.

Normal typeface indicates that the parties jointly submit the proposed language. *Italicized blue typeface represents plaintiffs’ proposed approach*; *italicized red typeface indicates the served defendants’ proposed approach*. The parties will be prepared to explain the reasons for their respective positions during their appearance before the Court next week on November 27, 2018.

actions shall be referred to as the “Consolidated Actions”) pursuant to Federal Rule of Civil Procedure 42(a) (ECF No. 4 ¶ 3); and

WHEREAS, pursuant to the Court’s October 30, 2018 Order, the Court also established a Master File Docket number for this proceeding at 18-mc-1001 (MDL No. 2862) and made other rulings, including setting an initial conference for November 27, 2018 at 10:30 a.m. (*see* ECF No. 4 ¶ 10);

NOW THEREFORE IT IS HEREBY ORDERED as follows:

A. CONSOLIDATED AMENDED COMPLAINT.

Plaintiffs' proposal: No later than the latter of February 1, 2019 or 45 days after this Court appoints lead class counsel, plaintiffs shall file a consolidated amended class action complaint (“Consolidated Complaint”) in this consolidated action.

Defendants' proposal: No later than January 11, 2019, plaintiffs shall file a consolidated amended class action complaint (“Consolidated Complaint”) in this consolidated action.

The Consolidated Complaint shall supersede all other complaints and be the operative complaint in the Consolidated Actions.

B. RULE 26(f) REPORT

1. Within 14 days of the filing of the Consolidated Complaint, plaintiffs and the defendants residing in the United States shall begin to meet and confer regarding the Rule 26(f) report, and regarding the preparation of the following documents:

- a. An order regarding production of electronically stored information (“ESI Protocol”);
- b. A protective order governing confidentiality;
- c. A deposition protocol; *and*

d. Plaintiffs' proposal: A document production protocol.

2. Within 21 days of plaintiffs' notification to the Court and to defendants that they have achieved lawful service of the Consolidated Complaint on all defendants, including the defendants residing outside of the United States, the parties shall submit the Rule 26(f) report to the Court. The Rule 26(f) report shall include a proposed date for the Court to schedule a Rule 16 conference.

3. At or before the Rule 16 conference, the parties shall submit a proposed Order requesting dates for the Court to hold conference calls, as needed, through December 2019.

Plaintiffs propose that the conference calls occur monthly.

Defendants propose that the conference calls occur following disposition of the motions to dismiss as directed by the Court.

Interim class counsel shall be responsible for coordinating a proposed joint agenda of all items to be raised during the conference calls, if any. Interim class counsel also shall be responsible for arranging a conference call number for such calls and for providing the number to the Court and all counsel.

C. RESPONSIVE PLEADINGS AND BRIEFING SCHEDULE

Plaintiffs' proposal: All Defendants shall each file their responsive pleading to plaintiffs' Consolidated Complaint, or otherwise move pursuant to Rule 12 of the Federal Rules of Civil Procedure, within 45 days of plaintiffs' notification to the Court and to defendants that plaintiffs have achieved lawful service of the Consolidated Complaint on all defendants. Plaintiffs' response shall be filed 45 days after receipt of the opposition.

Defendants' proposal: Defendants residing in the United States shall each file their responsive pleading to plaintiffs' Consolidated Complaint, or otherwise move pursuant

to Rule 12 of the Federal Rules of Civil Procedure, no later than February 26, 2019.

Plaintiffs shall file an opposition to defendants' motion to dismiss no later than March 28, 2019. Defendants residing in the United States shall file reply briefs in support of their motion to dismiss no later than April 29, 2019.

Defendants residing outside of the United States shall each file their responsive pleading to plaintiffs' Consolidated Complaint, or otherwise move pursuant to Rule 12 of the Federal Rules of Civil Procedure, within 21 days of plaintiffs' notification to the Court and to defendants that plaintiffs have achieved lawful service of the Consolidated Complaint on all defendants residing outside of the United States or February 26, 2019, whichever is later. Plaintiffs' response and out-of-country defendants' replies to the motions to dismiss shall be filed no later than 30 days following the preceding brief, respectively.

D. SERVICE OF DOCUMENTS

1. Defendants residing in the United States agree to accept service of new summonses and complaints filed in the Consolidated Actions via email from plaintiffs' counsel.

2. Defendants residing outside of the United States are to be served with summonses and complaints filed in the Consolidated Actions in accordance with the foreign service rules of Federal Rule of Civil Procedure 4.

3. Defendants shall effect service of papers on plaintiffs by serving a copy of the paper by e-mail on each interim class counsel, or via the Court's ECF system.

4. Plaintiffs shall effect service of papers on defendants by serving a copy of the paper by e-mail on counsel for defendants, or via the Court's ECF system. This Court's

Master Service List shall govern in all proceedings.

E. PRESERVATION

Until the parties reach agreement on and the Court enters an ESI Protocol, all parties and their counsel are reminded of their duty to preserve evidence that may be relevant to the Actions.

F. APPLICATION TO OTHER ACTIONS

1. This Order shall apply to all actions transferred to this Court for coordinated or consolidated pretrial proceedings by the JPML.
2. In addition, this Order shall apply to any later-filed related actions filed in or transferred to this Court, unless a party objecting to the consolidation of such action or to any other provision of this Order shall, within 21 days after the date upon which a copy of this Order is provided to counsel for such party, files an application for relief from this Order or any provisions herein and the Court deems it appropriate to grant such application.
3. The terms of this Order shall not have the effect of making any person, firm or entity a party to any action in which he, she or it has not been properly named or joined, in accordance with the Federal Rules of Civil Procedure. The terms of this Order and the consolidation ordered herein, and Defendants' consent thereto, shall not constitute a waiver by any party of any claims in or defense to any of the Actions, including defenses based on personal jurisdiction.

SO ORDERED.

DATED: November _____, 2018.

THE HONORABLE DONETTA W. AMBROSE
United States Senior District Judge